



UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT
CIVIL APPEAL STATEMENT

Please TYPE. Attach additional pages if necessary.

11th Circuit Docket Number: _____

TITLE IN FULL: National Labor Relations Board vs. United States Postal Service	DISTRICT: NAME OF JUDGE:
	DATE COMPLAINT FILED: DISTRICT COURT DOCKET NUMBER:
	DATE NOTICE OF APPEAL FILED: IS THIS A CROSS-APPEAL? • Yes <input checked="" type="checkbox"/> No
	HAS THIS MATTER BEEN BEFORE THIS COURT PREVIOUSLY? • Yes <input checked="" type="checkbox"/> No IF YES, PROVIDE: (A) CASE NAME (B) CITATION (C) DOCKET NUMBER

ATTORNEY NAME	MAILING ADDRESS	TELEPHONE AND FAX
FOR APPELLANT: • Plaintiff • Defendant Linda Dreeben • Other (Specify)	National Labor Relations Board 1099 14th Street, N.W. Washington, D.C. 20570	Tel: (202) 273-2960 Fax: (202) 273-0191
FOR APPELLEE: • Plaintiff • Defendant Roderick D. Eves, Esq. • Other (Specify)	United States Postal Service (Law Department - NLRB Unit) 1720 Market Street, Room 2400 St. Louis, MO 63155-9948	Tel: (314) 345-5864 Fax: (314) 345-5893

Circle/check/complete those items below and on page 2 that apply.

JURISDICTION	NATURE OF JUDGMENT	TYPE OF ORDER	RELIEF
Federal Question	Final Judgment, 28 USC 1291	Dismissal/Jurisdiction	Damages:
Diversity	Interlocutory Order, 28 USC 1292(a)(1)	Default Judgment	Amount Sought by Plaintiff: \$ _____
US Plaintiff <input checked="" type="checkbox"/>	Interlocutory Order Certified, 28 USC 1292(b)	Summary Judgment	Amount Sought by Defendant: \$ _____
US Defendant	Interlocutory Order, Qualified Immunity	Judgment/Bench Trial	Awarded \$ _____ to _____
	Interlocutory Order, Qualified Immunity	Judgment/Jury Verdict	Injunctions:
	Final Agency Action (Review) <input checked="" type="checkbox"/>	Judgment/Directed Verdict/NOV	• TRO
	54(b)	Injunction	• Preliminary • Granted
		Other <u>Consent Judgment</u>	• Permanent • Denied

NATURE OF SUIT (• Class Action)

Admiralty-Maritime	Civil Rights	Commercial Contract	Environment	Insurance	Social Security
Antitrust	• Title VII	Commodities	ERISA	Negotiable Instrument	Tax
Arbitration	• ADA	Communications	FELA	Personal Injury	TILA
Assault	• ADEA	Consumer	Finance	Privacy	US Constitution
Attorney Disqualification	• IDEA	Copyright/TM/Patent	FOI	Real Property	Warranty
Banking	• Harassment	Counsel Fee	Forfeiture	✓ Review Agency Action	Other Contract
Bankruptcy	• 1983	Election	Fraud	Securities	Other Tort
	• Other	Employment Contract	FTCA	Stockholder	Other Statutory Action
		Energy	Indemnity	Slander/Libel	

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11th Circuit Docket Number: _____

GENERAL

BASED ON YOUR PRESENT KNOWLEDGE:

- (1) DOES THIS APPEAL INVOLVE A QUESTION OF FIRST IMPRESSION? • Yes ☒ No
WHAT IS THE ISSUE YOU CLAIM IS ONE OF FIRST IMPRESSION?
- (2) WILL THE DETERMINATION OF THIS APPEAL TURN ON THE INTERPRETATION OR APPLICATION OF A PARTICULAR CASE OR STATUTE? • Yes ☒ No
IF YES, PROVIDE:
(A) CASE NAME/STATUTE
(B) CITATION
(C) DOCKET NUMBER, IF UNREPORTED
- (3) IS THERE ANY CASE NOW PENDING OR ABOUT TO BE BROUGHT BEFORE THIS COURT OR ANY OTHER COURT OR ADMINISTRATIVE AGENCY THAT:
(A) ARISES FROM SUBSTANTIALLY THE SAME CASE OR CONTROVERSY AS THIS APPEAL? • Yes ☒ No
(B) INVOLVES AN ISSUE THAT IS SUBSTANTIALLY THE SAME, SIMILAR, OR RELATED TO AN ISSUE IN THIS APPEAL? • Yes ☒ No
IF YES, PROVIDE:
(A) CASE NAME
(B) CITATION
(C) DOCKET NUMBER, IF UNREPORTED
(D) COURT OR AGENCY
- (4) WILL THIS APPEAL INVOLVE A CONFLICT OF LAW:
(A) WITHIN THE ELEVENTH CIRCUIT? • Yes ☒ No
(B) AMONG CIRCUITS? • Yes ☒ No
IF YES, EXPLAIN BRIEFLY:

ISSUES PROPOSED TO BE RAISED ON APPEAL, INCLUDING JURISDICTIONAL CHALLENGES:

Pursuant to Section 10(e) of the National Labor Relations Act, the NLRB applies to this Court for enforcement of its order against the United States Postal Service. The parties entered into a settlement stipulation consenting to enforcement of the Board's order by the Court.

I CERTIFY THAT I SERVED THIS CIVIL APPEAL STATEMENT ON THE CLERK OF THE U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT AND SERVED A COPY ON EACH PARTY OR THEIR COUNSEL OF RECORD, THIS 23rd DAY OF April, 2015.

Linda Dreeben

NAME OF COUNSEL (TYPE)

/s/ Linda Dreeben

SIGNATURE OF COUNSEL

ATTACH portion of district court, tax court, or agency record described in 11th Cir. R. 33-1(b) (judgments and orders appealed from or sought to be reviewed; any supporting opinion, findings of fact, and conclusions of law filed by the court or the agency, board, commission, or officer; any report and recommendation adopted by an order; findings and conclusions of an administrative law judge when appealing a court order reviewing an agency determination; any agency docket sheet or record index). Please see submitted

Certified Record for
documents

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

UNITED STATES POSTAL SERVICE

and

**Cases 10-CA-134589
10-CA-134594**

**AMERICAN POSTAL WORKERS UNION,
GADSDEN AREA LOCAL 537**

and

**Cases 10-CA-136149
10-CA-136159
10-CA-136172
10-CA-136176**

**NATIONAL ASSOCIATION OF LETTER
CARRIERS, BRANCH 1047**

and

**Cases 10-CA-138445
10-CA-138478
10-CA-138503
10-CA-138521**

**NATIONAL POSTAL MAIL HANDLERS
UNION, LOCAL 317**

DECISION AND ORDER

Statement of the Cases

On February 9, 2015, the United States Postal Service (the Respondent); the American Postal Workers Union, Gadsden Area Local 537 (APWU), National Postal Mail Handlers Union, Local 317 (NPMHU), and National Association of Letter Carriers, Branch 1047 (NALC) (collectively, the Unions); and the General Counsel of the National Labor Relations Board entered into a Formal Settlement Stipulation, subject to the Board's approval, providing for the entry of a consent order by the Board and a consent judgment by any appropriate United States Court of Appeals. The parties waived all further and other proceedings before the Board to which they may be entitled under the National Labor Relations Act and the Board's Rules and Regulations, and the Respondent waived its right to contest the entry of a consent judgment or to receive further notice of the application therefor.

The National Labor Relations Board had delegated its authority in this proceeding to a three-member panel.

The Formal Settlement Stipulation is approved and made a part of the record, and the proceeding is transferred to and continued before the Board in Washington,

D.C., for the entry of a Decision and Order pursuant to the provisions of the Formal Settlement Stipulation.¹

Based on the Formal Settlement Stipulation and the entire record, the Board makes the following

Findings of Fact

1. The Respondent's business

The Respondent is and has been, at all times material herein, an independent establishment of the Executive Branch of the Government of the United States and operates various facilities throughout the United States and the State of Alabama in the performance of its basic function to provide postal services to the Nation, including its facilities in Auburn, Birmingham, Decatur, Gadsden, Huntsville, Jacksonville, Leeds, and Tuscaloosa, Alabama (the Respondent's facilities), the facilities involved in this settlement and the underlying proceedings.

The Respondent is now and has been at all material times and entity subject to the Board's jurisdiction by virtue of the Postal Reorganization Act (the PRA), 39 U.S.C. Section 1209.

2. The labor organizations involved

At all material times, the Unions have been labor organizations within the meaning of Section 2(5) of the Act.

3. The appropriate units

(a) The following employees of the Respondent, herein called the APWU Unit, constitute a nationwide unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All maintenance employees, motor vehicle employees, postal clerks, mail equipment shops employees, material distribution centers employees, operating

¹ Chairman Pearce and Member McFerran note that the remedy to which the parties have agreed differs in some respects from previous broad orders that the Board has issued against the Respondent in cases alleging that the Respondent has violated Sec. 8(a)(5) of the Act by failing and refusing to provide relevant information. See, e.g., *United States Postal Service*, 345 NLRB 426 (2005), *enfd.* 486 F.3d 683 (10th Cir. 2007); *United States Postal Service*, 28-CA-017383 et al., unpublished order issued November 4, 2002, *enfd.* Case 02-9587 (10th Cir. 2003). These broad orders, as enforced by the United States Courts of Appeals, remain in effect, and the Board's approval of this stipulation does not modify these orders in any respect.

services and facilities services employees, excluding managerial and supervisory personnel, professional employees, employees engaged in personnel work in other than a purely non-confidential clerical capacity, security guards as defined by Public Law 91-375, 1201(2), all postal inspection service employees, employees in the supplemental work force as defined in Article 7, rural letter carriers, mail handlers or letter carriers.

Since on or before November 21, 2010, and at all material times, the American Postal Workers Union, AFL-CIO (the APWU National Union),² has been the designated exclusive collective-bargaining representative of the APWU Unit employed by the Respondent and during that time the APWU National Union, and its affiliated Locals on behalf of the APWU National Union, have been recognized as such representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from November 21, 2010, through May 20, 2015.

At all times since on or before November 21, 2010, by virtue of Section 9(a) of the Act, the APWU National Union has been and is the exclusive representative of the employees in the APWU Unit for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

(b) The following employees of the Respondent, herein called the NPMHU Unit, constitute a nationwide unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

The employees of the USPS described in Article 1 (Union Recognition) of the collective-bargaining agreement between the USPS and the National Union with a term of November 21, 2011 - May 20, 2016 (the unit) constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

Since on or before November 21, 2011, and at all material times, the National Postal Mail Handlers Union (the National NPMHU) has been the designated exclusive collective-bargaining representative of the NPMHU Unit employed by the Respondent and during that time the National NPMHU, and its affiliated Locals on behalf of the National NPMHU, have been recognized as such representative by the Respondent.

² Although the complaint alleges that the APWU International Union, the NPMHU International Union, and the NALC International Union are the exclusive collective-bargaining representatives of the employees in the APWU, NPMHU, and APWU units, respectively, the parties have stipulated that the [APWU] National Union, the National NPMHU, and the NALC National Union are the exclusive representatives of those employees.

This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from November 21, 2011, through May 20, 2016.

At all times since on or before November 21, 2011, by virtue of Section 9(a) of the Act, the National NPMHU has been and is the exclusive representative of the employees in the NPMHU Unit for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

(c) The following employees of the Respondent, herein called the NALC Unit, constitute a nationwide unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All city letter carriers, excluding managerial and supervisory personnel; professional employees; employees engaged in personnel work in other than a purely non-confidential clerical capacity; security guards as defined in Public Law 91-375, 1201(2); all postal inspection service employees; employees in the supplemental work force as defined in Article 7; rural letter carriers; mail handlers, maintenance employees, special delivery messengers, motor vehicle employees, and postal clerks.

Since on or before 1962, and at all material times, the National Association of Letter Carriers (the National NALC) has been the designated exclusive collective-bargaining representative of the NALC Unit employed by Respondent and during that time the National NALC, and its affiliated Branches on behalf of the National NALC, have been recognized as such representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from January 10, 2013 through May 20, 2016.

At all times since on or before 1962, by virtue of Section 9(a) of the Act, the National NALC has been and is the exclusive representative of the employees in the NALC Unit for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

ORDER

Based on the above findings of fact, the Formal Settlement Stipulation, and the entire record, and pursuant to Section 10(c) of the National Labor Relations Act, the National Labor Relations Board orders that:

The Respondent United States Postal Service, Auburn, Birmingham, Decatur, Gadsden, Huntsville, Jacksonville, Leeds, and Tuscaloosa, Alabama, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively and in good faith with the American Postal Workers Union, Gadsden Area Local 537, by failing, refusing, and unduly delaying in furnishing information that is relevant and necessary to the performance of their duties as agents of the American Postal Workers Union (APWU National Union), the exclusive bargaining representative of the bargaining unit employees in the following nationwide unit at its Gadsden, Alabama facilities:

All maintenance employees, motor vehicle employees, postal clerks, mail equipment shops employees, material distribution centers employees, operating services and facilities services employees, excluding managerial and supervisory personnel, professional employees, employees engaged in personnel work in other than a purely non-confidential clerical capacity, security guards as defined by Public Law 91-375, 1201(2), all postal inspection service employees, employees in the supplemental work force as defined in Article 7, rural letter carriers, mail handlers or letter carriers.

(b) Refusing to bargain collectively and in good faith with the National Postal Mail Handlers Union, Local 317, by failing, refusing, and unduly delaying in furnishing information that is relevant and necessary to the performance of their duties as agents of the National Postal Mail Handlers Union (National NPMHU), the exclusive bargaining representative of the bargaining unit employees in the following nationwide unit at its Birmingham, Alabama facilities:

The employees of the USPS described in Article 1 (Union Recognition) of the collective-bargaining agreement between the USPS and the National NPMHU with a term of November 21, 2011 - May 20, 2016 (the unit) constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

(c) Refusing to bargain collectively and in good faith with the National Association of Letter Carriers, Branch 1047, by failing, refusing, and unduly delaying in furnishing information that is relevant and necessary to the performance of their duties as agents of the National Association of Letter Carriers (National NALC), the exclusive bargaining representative of the bargaining unit employees in the following nationwide unit at its Gadsden, Alabama facilities:

All city letter carriers, excluding managerial and supervisory personnel; professional employees; employees engaged in personnel work in other than a purely non-confidential clerical capacity; security guards as defined in Public Law 91-375, 1201(2); all postal inspection service employees; employees in the supplemental work force as defined in Article 7; rural letter carriers; mail handlers, maintenance employees, special delivery messengers, motor vehicle employees, and postal clerks.

(d) In any other like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Upon request, provide the Unions with necessary and relevant information in a timely and appropriate manner.

(b) Each information request tendered by the Unions, orally or in writing, shall be recorded at each of the Respondent's facilities located in Auburn, Birmingham, Decatur, Gadsden, Huntsville, Jacksonville, Leeds, and Tuscaloosa, Alabama. These logs shall include the following information: a brief description of the information requested; the name of the individual who is making the request; the name of the supervisor who received the request; the date the request was made; and the date that the Respondent's manager or supervisor provided the Local Union with the requested information. If the manager or supervisor, having reviewed the documents requested, believes that the Respondent will need additional time, the manager or supervisor will inform the Union in writing, requesting additional time and explaining the need for the additional time.

(c) Each manager and supervisor who is designated to receive union requests for information at the Respondent's facilities located in Auburn, Birmingham, Decatur, Gadsden, Huntsville, Jacksonville, Leeds, and Tuscaloosa, Alabama, will receive annual training which encompasses how to maintain the log, and how to tender the relevant information requested by the Union; each such supervisor and manager will sign an acknowledgment form attesting to the fact that he or she has completed said training. A copy of this acknowledgement form shall be maintained in the supervisor's or manager's training and history files. Union stewards will be granted access to the logs, upon request. Supervisors or managers who fail to reasonably supply relevant information to the Union will have this fact mentioned in the "corrective action" column of the semi-annual audit report provided to the district manager and district manager of human resources. A repeated violation could lead to discipline of said supervisor or manager.

(d) Union stewards at the Respondent's facilities located in Auburn, Birmingham, Decatur, Gadsden, Huntsville, Jacksonville, Leeds, and Tuscaloosa, Alabama must be notified when the manager or supervisor who is designated to receive union requests for information at their particular facility has changed.

(e) The Respondent's legal department or its labor relations department shall conduct semi-annual audits of the logs at each of the Respondent's facilities located in Auburn, Birmingham, Decatur, Gadsden, Huntsville, Jacksonville, Leeds, and Tuscaloosa, Alabama to ensure that the information requested by the Unions is being

handled in a timely and appropriate manner, and to ensure the logs are being properly maintained. Following the audit, the legal department or labor relations department shall tender, in writing, a written report that will be forwarded to the district manager and district manager of human resources.

(f) Within 14 days of service by the Region, post at all of its facilities located in the State of Alabama, copies of the attached notice marked "Appendix A." Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. The manager of each facility will be electronically mailed the Board's official notice by the Respondent. Upon receipt of such notice, each manager will record the date said notice was received and the date on which the notices were posted at the facility. The Respondent will take reasonable steps to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current and former employees employed by the Respondent at the closed facility at any time since April 28, 2014.

(g) Within 21 days after service by the Region, file with the Regional Director for Region 10 a sworn certification of a responsible official on a form provided by the Region attesting to the steps the Respondent has taken to comply. The Regional Director shall be supplied a copy of the documents signed by the district manager of labor relations, attesting to the dates that the notices were received at each facility, and the dates that the notices were posted.

Dated, Washington, D.C., April 16, 2015.

Mark Gaston Pearce, Chairman

Harry I. Johnson, III, Member

Lauren McFerran, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX A

NOTICE TO EMPLOYEES

**POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government**

**PURSUANT TO A STIPULATION PROVIDING FOR A BOARD ORDER
AND A CONSENT JUDGMENT OF ANY APPROPRIATE
UNITED STATES COURT OF APPEALS**

FEDERAL LAW GIVES YOU THE RIGHT TO:

Form, join, or assist a union;
Choose a representative to bargain with us on your behalf;
Act together with other employees for your benefit and protection;
Choose not to engage in any of these protected activities.

WE WILL NOT fail, refuse, or unduly delay furnishing information requested by the American Postal Workers Union that is necessary for and relevant to the performance of their duties as the exclusive collective-bargaining representative of the following appropriate bargaining unit at our facilities in Auburn, Birmingham, Decatur, Gadsden, Huntsville, Jacksonville, Leeds, and Tuscaloosa, Alabama:

All maintenance employees, motor vehicle employees, postal clerks, mail equipment shops employees, material distribution centers employees, operating services and facilities services employees, excluding managerial and supervisory personnel, professional employees, employees engaged in personnel work in other than a purely non-confidential clerical capacity, security guards as defined by Public Law 91-375, 1201(2), all postal inspection service employees, employees in the supplemental work force as defined in Article 7, rural letter carriers, mail handlers or letter carriers.

WE WILL NOT fail, refuse, or unduly delay furnishing information requested by the National Postal Mail Handlers Union that is necessary for and relevant to the performance of their duties as the exclusive collective bargaining representative of the following appropriate bargaining unit at our facilities in Auburn, Birmingham, Decatur, Gadsden, Huntsville, Jacksonville, Leeds, and Tuscaloosa, Alabama:

The employees of the USPS described in Article 1 (Union Recognition) of the collective-bargaining agreement between the USPS and the National NPMHU with a term of November 21, 2011- May 20, 2016 (the unit) constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

WE WILL NOT fail, refuse, or unduly delay furnishing information requested by the National Association of Letter Carriers that is necessary for and relevant to the performance of their duties as the exclusive collective-bargaining representative of the following appropriate bargaining unit at our facilities in Auburn, Birmingham, Decatur, Gadsden, Huntsville, Jacksonville, Leeds, and Tuscaloosa, Alabama:

All city letter carriers, excluding managerial and supervisory personnel; professional employees; employees engaged in personnel work in other than a purely non-confidential clerical capacity; security guards as defined in Public Law 91-375, 1201(2); all postal inspection service employees; employees in the supplemental work force as defined in Article 7; rural letter carriers; mail handlers, maintenance employees, special delivery messengers, motor vehicle employees, and postal clerks.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, upon request, provide the Unions with necessary and relevant information in a timely and appropriate manner.

WE WILL record each information request tendered by the Unions in a log at our facilities located in Auburn, Birmingham, Decatur, Gadsden, Huntsville, Jacksonville, Leeds, and Tuscaloosa, Alabama. If our manager or supervisor, having reviewed the documents requested, believes that we will need additional time, the manager or supervisor will inform the requesting Local in writing, requesting additional time and explaining the need for the additional time.

WE WILL conduct annual training with each manager or supervisor designated to receive union requests for information at our facilities located in Auburn, Birmingham, Decatur, Gadsden, Huntsville, Jacksonville, Leeds, and Tuscaloosa, Alabama, on how to maintain the logs and how to tender the relevant requested information.

WE WILL notify union stewards when the manager or supervisor who is designated to receive union requests for information at their facility has changed.

WE WILL conduct, through our legal department or labor relations department, semi-annual audits of the logs at our facilities located in Auburn, Birmingham, Decatur, Gadsden, Huntsville, Jacksonville, Leeds, and Tuscaloosa, Alabama, to ensure that the information requested by the Unions is being handled in a timely and appropriate manner, and to ensure that the logs are being properly maintained. Following the

audit, our legal department or labor relations department shall tender, in writing, a written report that will be forwarded to the district manager and district manager of human resources.

UNITED STATES POSTAL SERVICE

The Board's decision can be found at www.nlr.gov/case/10-CA-134589 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

